

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA
AT CHARLESTON

SHERRY A. TULK,

Plaintiff,

v.

Civil Action No. 2:15-cv-11653

RIC CAVENDER, EAST END MAIN
STREET, CHARLESTON MAIN STREETS,
AFFILIATE ORGANIZATIONS, AMY MCCLAUGHLIN,
MARY BETH HOOVER, MARYANNE CRICKARD,
ROB THOMAS, MIKE PUSHKIN, MARY JEAN DAVIS,
MARC WEINTRAUB, DICKINSON GOULD,
JIM EDWARDS, LORI BRANNON, SARAH HALSTEAD,
WEST END MAIN STREET, JOSH DODD, and
MESH DESIGN AND DEVELOPMENT,

Defendants.

MEMORANDUM OPINION AND ORDER

Pending is defendants' motion to dismiss, filed
January 13, 2016.

This action has been referred to Dwane L. Tinsley,
United States Magistrate Judge, who has submitted his Proposed
Findings and Recommendations ("PF&R") on the motion to dismiss
pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B).
Plaintiff's complaint in this action, which was filed on July
30, 2015, makes claims related to copyright infringement and
unfair trade practices. Defendants moved to dismiss on January

13, 2016, because of plaintiff's failure to serve defendants with a copy of the complaint within the allotted time. The magistrate judge filed his PF&R regarding defendants' motion to dismiss on May 20, 2016.

The court has reviewed the PF&R entered by the magistrate judge on the aforementioned date. Defendants had moved to dismiss because plaintiff did not serve them with process within 120 days. The magistrate judge noted, however, that pro se plaintiffs proceeding in forma pauperis - that is, without prepayment of costs or fees - are entitled to rely on court officers to complete service of process. And, in an in forma pauperis case, the magistrate judge typically orders service of the defendants only after he has screened the complaint pursuant to 28 U.S.C. § 1915(e) (2) (B) .

In the present case, the magistrate judge had not completed his screening of the complaint at the time of defendants' motion, and so service had not been ordered or completed. The magistrate judge stated that "where a plaintiff has demonstrated reasonable efforts to assist in obtaining . . . service [through officers of the court], he or she should not be penalized by dismissal for untimely service." Consequently, the magistrate judge recommended that defendants' motion to dismiss

be denied without prejudice, and he noted, also, that he had completed his screening and would soon order service. Neither party has filed an objection to the PF&R.¹

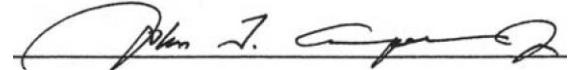
Inasmuch as neither party has objected, and following a de novo review, it is ORDERED that the PF&R be, and it hereby is, adopted and incorporated herein. It is further ORDERED that defendants' motion be, and it hereby is, denied without prejudice.

The court also ORDERS that this matter be, and it hereby is, recommitted to the magistrate judge under the original reference to take all such further steps and proceedings herein as shall be appropriate.

¹ Plaintiff did file a document labeled an "Objection" on June 3, 2016, but it was an objection to defendants' motion to dismiss, not to the PF&R. In that "objection," plaintiff also requested "an extension of 30 days from the date of this request . . . for service of summons upon defendants and disposition, to allow for determination of proceeding with complicated and additional complaints and parties," and "to allow time . . . to seek counsel for an evident, complicated, extensive, and lengthy complaint." Inasmuch as the Clerk issued summons to defendants on June 3, there is no need for the court to extend the time for service. Beyond the additional time requested for service, plaintiff does not state what deadlines she wishes to be delayed. To the extent that she seeks additional modification of the scheduling order, that request is best directed to the magistrate judge, to whom the case will continue to be committed.

The Clerk is directed to send a copy of this written opinion and order to counsel of record and plaintiff.

ENTER: July 27, 2016



John T. Copenhaver, Jr.
United States District Judge